IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.3436 of 1991

Shri Bahadur Ali Abalal
Borgave, age about 35 years.
Occ: Nil resident of 10th
Lane, Jaysingspur
represented through
his natural guardian
Smt.Shahjadbi Abalal Borgave
Agd 57 years, occ: Household
resident of 10th Lane, Jaysingpur,
Taluka Shirol District Kolhapur ..Petitioner

vs.

1.Sarjerao Shantram Katke
Adult, Occ: owner and
Driver, resident of Jawahar
nagar, 2832, B Ward.
Kolhapur

2.The United India Insurance Co.
Ltd.,Branch Jaysingpur ..Respondents

Shri Tejpal S.Ingale for petitioner None for respondents.

CORAM: S.B.MHASE J.
7th March, 2006

ORAL JUDGMENT:

1. The petitioner has approached this Court under Article 227 of the Constitution of India challenging the order passed by the Member, Motor Accident Claims Tribunal, Kolhapur below Exh.1 in Motor Accident Claim Application No.76 of 1989 on 12th September,1990. The said Misc. (MAC) application was filed for condonation of delay of 2 years and 259 days in filing the Motor Accident Claim. The accident has taken place on 21st July,

1986 and the application for compensation along with the delay condonation application is filed on 19th October, 1989. It is the case of the applicant that as a result of accident he suffered serious injury and he became lunatic and was not in a position to understand regular affairs of the life. Therefore, the petition has been filed by his mother on his behalf. It was contested by the respondent. Ultimately, the application was rejected. The said order is under challenge.

2. I find that the application has been filed by the mother and in the application it is stated that the applicant has become lunatic. Thus as a next friend, the mother has continued the said litigation. In fact, it was obligatory, under these circumstances for the Court to find out whether the petitioner who suffered the accident is a lunatic or not and whether the permission should be granted to his mother to continue the litigation as a next friend. The delay was not condoned since the certificate of lunacy was not produced on record. However, under these circumstances, it was the duty of the Court to enquire into this aspect and to find out whether he was lunatic or not.d The Motor Accident Tribunal overlooked the rule 276(1)(b) of Maharashtra Motor Vehicles Rules, 1989 which states that following provisions of Civil

Procedure Code, 1908 shall, so far as may be, apply to the proceedings before every Claims Tribunal, namely, (b) Order XXXII, Rules 1 to 15 (both inclusive). Therefore, Claims Tribunal shall have conducted enquiry as per these provisions to ascertain whether applicant/injured is a lunatic or pefrson of unsound mind instead of putting burden on next friend, namely brother in this case. Along with this petition two certificates both dated 2nd May, 1990 have been produced on record. The said certificates have been issued by Dr.Laxmikant Tosniwal and Dr.Arun Y.Kulkarni which support the case of the petitioner. In fact, the petitioner could have produced these certificates before the Tribunal also but it appears that the petitioner was lunatic and his mother who is his next friend is an illiterate lady and, therefore, these certificates were not produced. I cannot ignore the fact that subsequently there is change in law and now no limitation is prescribed for filing the motor accident claim. However, this is a case already filed and I have to deal with it according to law then existing. However, the legislative policy is reflected by subsequent amendment and, therefore, I have to bear in mind thwo aspects while considering sdelay condonation application. Therefore, claims tribunal has to take a liberal view of the matter. However, since the case of the

applicant is governed by old law, it will have to be dealt with in accordance with the said law. Therefore, the duty to get satisfied whether the petitioner is lunatic or not has not been discharged by the Court. In fact, while granting such permission to sue the Court should have satisfied with this aspect and, therefore, I set aside the order dated 12th September, 1990 and remit the matter to the Trial Court. The Trial Court i.e. Motor Accident Claims Tribunal having jurisdiction over the matter shall hear the delay condonation application on its merits after having ascertained as to whether the petitioner is lunatic or not and the mother should be given permission to represent the petitioner in accordance with the procedure established by Rule 276 read with Order XXXII Rules 1 to 15 (both inclusive) of Civil Procedure Code, 1908.

3. Order accordingly.

(S.B.MHASE J.)